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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,877	12/11/2001	Matthew L. Albert	600-1-291 CON	4555

23565 7590 02/16/2005

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EXAMINER

NICKOL, GARY B

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/014,877	Applicant(s) ALBERT ET AL.	
	Examiner Gary B. Nickol Ph.D.	Art Unit 1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50, 55-61 is/are pending in the application.
 4a) Of the above claim(s) 1-27, 31-48, 50 and 57-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-30, 49, 55 and 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Re: Albert *et al.*

Date of priority: 2/20/1998

Response to Amendment

The Amendment filed 11-08-2004 in response to the letter of 10-04-2004 is acknowledged and has been entered.

Claims 1-50, and 55-61 are pending.

Claims 1-27, 31-48, 50, 57-61 are withdrawn from further consideration by the examiner under 37 CFR 1.142(b) as being drawn to non-elected inventions.

Claims 28-30, 49, 55-56 are currently under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Election/Restrictions

Previously presented claim 50 and new claims 57-61 remain directed to an invention that is independent or distinct from the invention originally claimed for the reasons of record in the action mailed 10-04-2004 and for the reasons set forth herein. Applicants argue (Remarks, page 11) that the new claims fall within the scope of the claims as originally filed and elected by way of the restriction requirement. This argument has been considered but is not found persuasive.

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Claims 59-61 merely present the same amendments as those presented earlier, only they are now presented in dependent form. Claims 50 and 57-58 are further independent because they include distinct steps that were not previously considered and are considered independent from that which was originally examined. For example, Claim 50 now requires depriving the cells of nutrients, and Claim 57 requires inducing apoptosis by infection with a virus. These new limitations would be subject to further restrictions had they been earlier presented.

Since applicant has received an action on the merits for the originally presented invention (that which was prosecuted and mailed 04-14-2004), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 50, and 57-61 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Information Disclosure Statement

As set forth previously, a signed IDS (signed by another Examiner) was present. If it is applicant's intention that the IDS be made of record *by this examiner*- a new IDS that can be properly signed and initialed by this Examiner needs to be submitted.

Rejections Maintained:

Claims 28-30 remain rejected and claims 49, and 55-56 are rejected under 35 U.S.C. 102(b) as being anticipated by ENGLEMAN *et al.* (WO 94/02156, February 3, 1994) for the reasons of record and for the reasons set forth below.

Applicants argue (Response, bottom of page 13- to middle of page 14) that Engleman *et al.* do not teach the methods of the present invention as currently claimed because Engleman *et al.* did not contemplate the use of apoptotic cells or apoptotic cell fragments, blebs, or bodies containing antigen for delivery to dendritic cells for priming T cells. This argument has been considered but is not found persuasive for the reasons of record. As set forth previously, Engleman *et al.* clearly teach the exposure of dendritic cells with tumor cells which have been irradiated (page 19). Furthermore, such irradiation is inherently “gamma” irradiation because, as noted by applicants (Response, page 14) in all likelihood Engleman *et al.* used gamma irradiation which is standard in the art for rendering tumor cells replication incompetent. Interestingly, applicants also argue that the cells taught by Engleman “would not be as efficient as apoptotic cells in presenting antigen for uptake by dendritic cells” as so claimed in the instant application. Thus, applicants assert that Engleman *et al.* is not enabled for methods of inducing apoptosis using the irradiation procedures. This argument has been considered but is not found persuasive as applicant’s disclosure clearly teaches (page 4) that their invention provides that the population of donor cells expressing said antigen can be induced to undergo apoptosis using a variety of methods including, but not limited to, viral infection, irradiation with ultraviolet light, gamma radiation, etc. Thus, applicants have not clearly pointed out any distinct differences between the claims and the teachings of Engleman *et al.* and the rejection is maintained.

The remainder of applicant’s arguments (pages 15-17) is spurious at best because they do not clearly address the rejected claimed limitations. For example, applicants reproduce a number of passages from the specification but fail to contrast the teachings of the prior art with that which has been claimed. Applicants are reminded that the claims define the subject matter of the

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invention and that the specification cannot be relied upon to read limitations into the claims.

Thus, applicant's arguments have not been found persuasive and the rejection is maintained.

All other rejections and or objections are withdrawn in view of applicant's amendments and arguments there to.

No claim is allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary B. Nickol Ph.D. whose telephone number is 571-272-0835. The examiner can normally be reached on M-Th, 8:30-5:30; alternate Fri., 8:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary B. Nickol Ph.D.
Primary Examiner
Art Unit 1642

GBN



GARY NICKOL
PRIMARY EXAMINER